

BPW Advisory 2009-2 Procurement - Emergency Procurements; Reports to the BPW

Purpose: To summarize emergency-procurement requirements and instruct procurement agencies on processing reports of emergency procurements.

Background: A State agency may conduct an emergency procurement when sudden and unexpected circumstances that could not reasonably be foreseen require action to prevent serious damage to the public health, safety, or welfare. When that stringent standard is met, the procurement officer needs the approval of only the agency head to award the contract. The agency must report the emergency procurement to the Board of Public Works, but does not seek Board approval to award the contract because the agency – due to the emergency – has already awarded it.

When an emergency occurs, the agency's priority is to "assure that the required items are procured in time to meet the emergency." This procurement is tailored to ensure that "only the types of items and quantities of item necessary to avoid or to mitigate serious damage to public health, safety, and welfare" are procured on the emergency basis. "Such competition as is possible and practicable shall be obtained." In other words, the "emergency" designation means that the agency may substitute another selection method for the formal competitive sealed bid or competitive sealed proposal method.

If time permits, an agency should consult with the appropriate control agency and the Governor's Office of Minority Affairs for guidance on enhancing competition within the context of the emergency. Agencies are strongly encouraged to solicit bids from small and minority-owned businesses and should establish an MBE subcontract goal when appropriate.

After awarding the contract, the agency submits a written report to the Board of Public Works detailing and justifying the emergency designation and the source selection. The report is submitted as an Appendix Item to the Secretary's Agenda. In reviewing the item, "the Board may direct the procurement agency or the appropriate control agency to take any action the Board deems appropriate." Thus, even though the emergency contract has been awarded, the Board may require the agency to take preventive or corrective future action.

Authority: State Finance and Procurement Article, §13-108, Annotated Code of Maryland; COMAR 21.05.06.02. ["Emergency" is defined at COMAR 21.01.02.01B(36).]

Procedure: An agency that procures goods or services in excess of \$25,000 on an emergency basis must report the procurement to the Board of Public Works (and to the appropriate control agency) within 45 days of awarding the contract. Day one is the day that the agency awards the contract; the report is considered submitted on the day the Board of Public Works acknowledges receipt of the report. Additionally, notice must be posted in eMaryland Marketplace not more than 30 days after award.

A procurement agency submits its emergency-procurement report to the Board of Public Works by submitting two documents: (1) a Procurement Officer's Determination of Emergency; and (2) an Action Agenda Item that will appear on the Appendix to the Secretary's Agenda.

Please note that on the Action Agenda Item, it is crucial to detail both the Nature of the Emergency and the Basis for Selection. When the agency is late in submitting its report to the Board, the agency must also detail the Reason for Late Report.

Note: When an agency must modify an existing contract on an emergency basis – that is, emergency circumstances make infeasible the standard process for modification approval – the modification may be treated as an emergency procurement and reported to the Board. On the other hand, modifying a contract that was originally awarded on an emergency basis is not itself a basis for bypassing the standard process for modification approval. Only in the rare case where an emergency contract – that was properly limited to the types and quantities

Attachments

[Emergency Agency
Form \(/Documents
/2009-2%20Emer%20](#)

[Proc Officer Deter
Form \(/Documents
/2009-2%20Emergenc](#)

[Affidavit Language
Form \(/Documents
/2009-2%20emergenc](#)

of items necessary to avoid or to mitigate serious damage to public health, safety, and welfare – must be modified to cover a new or a continuing emergency, may the modification be processed as an emergency.